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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------------|------------------|
| 10/614,646 | 07/07/2003 | Hampar L. Karagoezian | KARAG-007B2 | 7637 |
| 7590 Kit M. Stetina STETINA BRUNDA GARRED & BRUCKER Suite 250 75 Enterprise Aliso Viejo, CA 92656 | | | EXAMINER FAY, ZOHREH A | |
| | | | ART UNIT 1618 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 01/22/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | |
|------------------------------|---------------------------|------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/614,646 | KARAGOEZIAN, HAMPAR L. |
| | Examiner Zohreh A. Fay | Art Unit 1618 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 October 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 11-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Art Unit: 1618

Claims 1-7 and 10-18 are presented for examination.

The amendments and remarks filed on October 24, 2006 have been received and entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7 and 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger (U.S. Patent 4,574,084) in view of Frangione (U.S. Patent 5,782,992).

Berger teaches a process for the preparation of a stabilized, modified aqueous chlorite solution with a peroxy compound, such as hydrogen peroxide. See the abstract. The concentration of sodium chloride is taught in column 7, lines 66-68. The concentration of peroxy compound is taught in column 2, lines 66-68. Frangione teaches the use of a chlorite compound such as sodium chloride or hydrogen peroxide in a contact lens formulation. See column 2, lines 8-15. The concentration of chlorine dioxide within the claimed range is also taught by the above reference. See column 4, lines 3-15. The use of lubricating polymers is taught in column 5, lines 39-44. The use of surfactants is taught in column 4, lines 40-50. The primary reference differs from the claimed invention in the use of the surfactants and lubricating polymers. It would have been obvious for a person skilled in the art to incorporate a lubricating agent and a surfactant to the primary reference, considering that Frangione teaches the addition of such agents to contact lens composition having sodium chloride or hydrogen peroxide as old.

One skilled in the art would have been motivated to combine the teachings of the above references, since one relates to the use of hydrogen peroxide and a chlorite compound in a pharmaceutical formulation and the other relates to the use of surfactants and lubricating polymers to ophthalmic formulations as old. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1-7 and 11-18 are properly rejected under 35 U.S.C. 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z.F

ZOHREH FAY
PRIMARY EXAMINER
GROUP 1600

